



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2520/02

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

7/9/09

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regen.

- 1 AN ACT *to amend* 119.04 (1); and *to create* 48.659, 118.075 and 118.076 of the
2 statutes; **relating to:** physical fitness assessments, school nutrition, a quality
3 rating system for day care centers, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Performance-Based Disease Management for Large Populations.

The Department of Public Instruction (DPI) and the University of Wisconsin (UW) received a three-year grant, which ends in 2010, to administer the FitnessGram physical fitness test in middle schools that volunteer to participate. The FitnessGram is a software program which is comprised of four tests: body mass index measurement, a quasi-situps abdominal strength test, a flexibility test, and the Progressive Aerobic Cardiovascular Endurance Run (PACER). For all elements of the FitnessGram, age and gender norms have been developed and individual scores are measured against these norms. The PACER is a 20-meter shuttle run (back and forth) which is conducted in a class-based setting in which 20-50 children can run at a time. The PACER is designed to measure aerobic capacity. The UW has found that the PACER test is a good measure of fitness and a good indicator of diabetes risk.

This bill directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils in grades 3 through 12 is assessed annually and specifies that the assessment must include an evaluation of pupils' aerobic capacity. These schools are not required to assess pupils who have a disability or other condition as specified by DPI administrative rule. The results must be kept confidential but schools are required to send results to DPI and provide an individual child's results to their parent or guardian.

The national school lunch and school breakfast programs provide federal funding to schools to serve free and reduced-priced meals and snacks. In exchange for receiving federal funds, schools must serve meals and snacks that adhere to federal nutritional requirements set by the U.S. Department of Agriculture (USDA). USDA requires that school lunches must meet the applicable recommendations of the 1995 Dietary Guidelines for Americans, which recommend that no more than 30% of an individual's calories come from fat and less than 10% from saturated fat. Federal guidelines do not apply to or limit the sale of a la carte or vending machine foods sold in addition to federally available meals and snacks.

This bill specifies that, beginning in the 2012-13 school year, or when a school contract with a vending machine company expires, whichever is later, all public, charter, and private schools must use the following requirements for foods sold outside of federally reimbursed USDA meal programs (school lunch, school breakfast, school milk, and nutritional improvement for the elderly): no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat, and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day on school grounds. Before the start of the school day until the end of the school day, only milk, water, and 100% fruit juice may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold on school grounds. Candy may not be sold in vending machines at any time of the day on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements.

The Department of Children and Families (DCF) licenses day care centers. Current law requires anyone caring for four or more children under age seven who are unrelated to the provider to be licensed. The two types of licensed day care centers are: 1) family day care centers (up to eight children in care at any given time); and 2) group day care centers (nine or more children at any given time). ~~Licensed day care centers are not rated as to the quality of services they provide in relation to each other.~~ Current licensing requirements specify that meals and snacks provided at a licensed day care center must comply with the U.S. Department of Agriculture Child and Adult Care Food Program minimum meal requirements. Also under current licensing requirements, licensed day care centers must provide children with experiences that promote large and small muscle development and children must go outside daily unless the weather prohibits doing so. Current licensing requirements do not specifically direct licensed day care centers to provide nutrition education to children.

The bill requires ~~DCF to establish a child care quality rating system that rates the quality of the child care provided by licensed day care centers.~~ The quality rating system ~~must~~ include indicators regarding the quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served at the day care center, and any other nutritional policies implemented by the day care center. ~~DCF must~~ consult with the Department of Health Services in establishing the

In addition, the bill requires
DCF to

or recipient
prospective
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and
supervision
from a
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system.

Current law as created by the 2009-11 biennial budget act 20-4 Wisconsin Act 289 requires DCF to provide a child care quality rating system that rates the quality of the child care provided by a licensed day care center that receives reimbursement under the Wisconsin Child Care Program or that volunteers for eating under the system and to make the rating information available under that system to the parents/guardians and legal custodians of children who are

↑ was created by 2009 Wisconsin Act 28, is renumbered 48.659 (1)
(intro.) and amended

indicators used to evaluate the quality of care provided at a licensed day care center. DCF is required to make the rating information provided under the quality rating system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a day care center that is rated under the quality rating system. Finally, DCF is required to seek funding to provide financial assistance to licensed day care centers that wish to improve their rating under the quality rating system.

the bill requires DCF

1 SECTION 1. 48.659 of the statutes is created to read:

2 ~~48.659 Child care quality rating system. (1) The department shall~~
3 ~~establish a child care quality rating system that rates the quality of the child care~~
4 ~~provided by a day care center licensed under s. 48.65. The quality rating system shall~~
5 ~~include indicators regarding the relative quality of all of the following:~~

6 (a) The nutrition education provided to children by the day care center,
7 including the developmental appropriateness of that education.

8 (b) The physical activity that is included in the day care center's program,
9 including the developmental appropriateness of that activity.

10 (c) The nutritional value of food and beverages served to children by the day
11 care center.

12 (d) Any other nutritional policies implemented by the day care center.

13 (2) The department shall do all of the following:

14 (a) Consult with the department of health services in establishing the
15 indicators used to evaluate the quality of care provided by day care centers.

16 (b) ~~Make the rating information provided under the quality rating system~~
17 ~~available to the parents, guardians, and legal custodians of children who are~~
18 ~~recipients, or prospective recipients, of care and supervision from a day care center~~
19 ~~that is rated under the quality rating system~~

20 (c) Seek funding to provide financial assistance to day care centers that wish
21 to improve their rating under the quality rating system.

SEC. #. CR., 48.659 (2)

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component

Insert
3-5

48.659 (1)
8 (b)

48.659

NOTE: Requires ~~DCF to establish~~ ^{all} a child care quality rating system ^{that rate} the quality of the child care provided by licensed day care centers. ^{the} ~~the~~ quality rating system ^{to} ~~must~~ include indicators regarding the relative quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served by the day care center, and any other nutritional policies implemented by the day care center. ~~DCF must~~ ^{Requires DCF} work with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided by a day care center. ~~DCF is required to make the rating information provided under the quality rating system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a day care center that is rated under the quality rating system.~~ ^{Requires the} Finally, ~~DCF is required~~ ^{requires DCF} to seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

SECTION 2. 118.075 of the statutes is created to read:

118.075 Assessment of pupil physical fitness. (1) Beginning in the 2010-11 school year, every school board, the operator of every charter school under s. 118.40 (2r), and the governing body of every private school shall do all of the following:

(a) Except as provided in sub. (2), annually assess the physical fitness of each pupil enrolled in grades 3 to 12. The assessment shall include an evaluation of the aerobic capacity of each pupil based upon criterion-referenced standards specific to age and sex and the physical fitness level required for good health.

(b) Provide to each pupil ^{and} or to the parent or guardian of each ^{minor} pupil a copy of the results of the pupil's physical fitness assessment under par. (a).

(c) Annually compile the results of the physical fitness assessment conducted under par. (a) and provide a summary of the results to the department. The summary may not contain the names of individual pupils or the teachers or instructional staff of individual pupils. In this paragraph, "instructional staff" has the meaning given in the rules promulgated by the department under s. 121.02 (1) (a) 2.

(2) (a) The requirement under sub. (1) (a) does not apply to a pupil for whom the assessment is inappropriate as determined by the state superintendent by rule.

(b) The state superintendent shall promulgate rules to implement and administer this section, including all of the following:

1. Criteria to determine when the assessment required under sub. (1) (a) is inappropriate for or should not be administered to a pupil.

2. The assessment instrument to be used in the assessment required under sub. (1) (a).

NOTE: Directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils enrolled in grades 3 to 12 is assessed annually beginning in the 2010-11 school year. Those schools are not required to assess pupils for whom the assessment is inappropriate, as specified by DPI administrative rule. The assessment must include an evaluation of pupils' aerobic capacity based upon criterion-referenced standards that are specific to a pupil's age and gender and based on the physical fitness level required for good health. The results must be kept confidential, but must be provided to DPI and to a child's parent or guardian.

SECTION 3. 118.076 of the statutes is created to read:

118.076 School nutrition. (1) In this section:

(a) "Bottled drinking water" has the meaning given in s. 97.34 (1) (a).

(b) "Candy" means any ^{food} item that has brown sugar, corn sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, sucrose, sugar, or syrup, listed first or second in the list of ingredients.

****NOTE: This definition would capture most sweetened yogurts, granola bars, cereal or breakfast bars, gelatin-based fruit snacks, and possibly chocolate milk. Is that your intent?

(c) "Soda water beverage" has the meaning given in s. 97.34 (1) (b).

(d) "Soft drink" means a soda water beverage that contains brown sugar, corn sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, sucrose, sugar, syrup, artificial sweetener, or stevia, except that

1 "soft drink" does not include a soda water beverage that contains at least 10 percent
2 natural fruit or vegetable juice.

3 (2) No school board, operator of a charter school under s. 118.40 (2r), or
4 governing body of a private school may allow the sale or dispensing of candy or a soft
5 drink from a vending machine located on school grounds.

> ****NOTE: Did you intend to prohibit persons other than pupils from purchasing
candy or soft drinks from a vending machine on school grounds? That is, may any vending
machine on school grounds offer candy or soft drinks? In the teachers lounge?

> ****NOTE: Do you want to provide a definition for vending machine? See, for
example, the definition at s. 70.111 (23), whether or not amended by 2009 Wis. Act 2.

> ****NOTE: This provision would not prohibit the distribution of candy for free by
pupils (for birthday treats or in celebration of holidays or special occasions). Is that your
intent?

6 (3) Every school board, the operator of every charter school under s. 118.40 (2r),
7 and the governing body of every private school shall do all of the following:

8 (a) Except as provided under par. (b), ensure that all food sold to pupils at school
9 or on the school grounds on a school day satisfies the following minimum standards:

> ****NOTE: I modified this section to apply to the sale of food to pupils; I assumed that
it would be acceptable for teachers or administrators or staff or even (parent) volunteers
to buy the food described under this paragraph. No?

10 1. Except for nuts and seeds, no more than 30 percent of the total calories of
11 the food come from fat.

12 2. No more than 10 percent of the total calories of the food come from saturated
13 fats.

> ****NOTE: This par. (a) does not regulate the distribution for free of food to pupils
that does not satisfy these requirements. For example, classroom snacks provided for free
by the teacher or a pupil's parent may, under this paragraph, have a fat content that
exceeds the 30 percent requirement under subd. 1. Is that your intent?

14 (b) Paragraph (a) does not apply to food sold to pupils through the programs
15 under ss. 115.34, 115.341, 115.343, and 115.345.

> ****NOTE: Is food always sold to pupils under these sections? That is, would any
pupils be eligible to receive food for free under these programs? If so, the standards under
par. (a) and (b) would apply to that free food. To make par. (a) and (b) inapplicable to

sections 115.34, 115.341, 115.343, and 115.345, I could substitute the phrase "distributed to pupils through" for "sold to pupils through." Please advise.

(c) 1. Except as provided in subd. 2., ensure that only the following beverages are available for purchase by pupils at school or on the school grounds on a school day:

a. Bottled drinking water.

b. Milk.

****NOTE: Does this include flavored (i.e. chocolate) milk? Chocolate milk is included in the Wisconsin school day milk program at s. 115.343, stats. However, I suspect chocolate milk would qualify as "candy" under the definition, above, which would pose a conflict with s. 115.343, stats. How would you like to resolve this conflict?

c. One hundred percent fruit juice.

****NOTE: What about 100 percent vegetable juice?

2. Beginning 30 minutes after the end of the school day and until the school is closed for the night, soft drinks may be sold to pupils on school grounds.

(d) Ensure that candy is not sold to pupils before or during a school day or for the 30 minutes immediately following the end of the school day.

****NOTE: The draft prepared for the Committee permits candy to be sold on school grounds 30 minutes after the end of the school day. However, the Committee's draft did not explicitly prohibit the sale of candy from a source other than a vending machine before or during the school day. In contrast, the Committee's draft did prohibit the sale of soft drinks before and during the school day. I drafted the provision, above, to prohibit the sale of candy until 30 minutes after the end of the school day. Okay?

(b) (e) Encourage the consumption by pupils of whole grains, fresh fruits, and fresh vegetables.

(c) (f) Encourage parent teacher organizations, school clubs, school teams, and other school groups conducting fund raising in which the sale of food is involved to follow the standards and requirements established ⁱⁿ ⁱⁿ ^{and (b) and subd. 2.} pars. (a), (d), and (e).

SECTION 4. 119.04 (1) of the statutes ^{as affected by 2009 Wisconsin Act 28, 1} is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.365 (3), 115.38 (2), 115.445, 115.445, 115.45, 118.001 to 118.04,

1 118.045, 118.06, 118.07, 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145
 2 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24
 3 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291, 118.30 to 118.43,
 4 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13 (1), (2) (b) to (g),
 5 (3), (14), (17) to (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and
 6 120.25 are applicable to a 1st class city school district and board.

7 SECTION 5. Initial applicability.

8 (1) The treatment of section 118.076 (2) and (3) (a) of the statutes first applies
 9 to a contract between a Vendor of a vending machine operator and a school board, operator of a
 10 charter school under section 118.40 (2r) of the statutes, or governing body of a private
 11 school, as defined in section 115.001 (3r) of the statutes, entered into, modified, or
 12 renewed on July 1, 2012.

****NOTE: I assumed the Special Committee intended that the initial applicability provision would apply to the sale or distribution from vending machines of foods prohibited under proposed s. 118.076 (3) (a). Although there is only one reference to vending machines, in proposed s. 118.076 (2), in the bill, I suspect that food that would not meet the new nutritional standards established under s. 118.076 (3) (a) is sold from vending machines. Without an initial applicability provision tied to the sale of foods under proposed s. 118.076 (3) (a), the bill would apply to sales of these other prohibited foods from vending machines and otherwise on July 1, 2012.

****NOTE: I was not clear how the Special Committee wanted to deal with those schools that either do not have a contract with a vending machine company on the day after publication or that renew, modify, or enter into a contract with a vending machine company after the day after publication but before the effective date of proposed s. 118.076.

What if, for example, a school district enters into a contract with a vending machine operator on June 30, 2012, and that contract permits candy and soft drinks to be sold from the vending machine for three years?

Do you want to prohibit a school district from entering into contracts with vending machine companies that violate the provisions of proposed s. 118.076 (2) and (3) (a) after the effective date of the bill but before the effective date of s. 118.076?

13 SECTION 6. Effective dates. This act takes effect on the day after publication,
 14 except as follows:

15 (1) The treatment of section 118.076 of the statutes takes effect on July 1, 2012.

INERT 9-NOTE

NOTE: Requires all public schools, charter schools, and private schools beginning in the 2012-13 school year or when a school contract with a vending machine company expires, whichever is later, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day on school grounds. Before the start of the school day until the end of the school day, only milk, water, and 100% fruit juice may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold on school grounds. Candy may not be sold in vending machines at any time of the day on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 3-5

(1) (intro.)

LPS: this is SECTION 1057 of 2009 Wisconsin Act 28

(plan)

SECTION 1057. 48.659 of the statutes is created to read:

48.659 Child care quality rating system.

The department shall provide a child care quality rating system that rates the quality of the child care provided by a ~~child care provider~~ licensed under s. 48.65 that receives reimbursement under s. 49.155 for the child care provided or that volunteers for rating under this section. The department shall make the rating information provided under ~~that~~ system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a ~~child care provider~~ that is rated under this section, including making that information available on the department's Internet site.

day care center

the quality rating

the quality rating system

(notebook)

The quality rating system shall include ^{indicators} indicators regarding the relative quality of all of the following:

SEC. #. (2); 48.659 (1) (a) to (d)

(end of insert)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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(e) "Vending machine" means any self-service device offered for public use ^{or that} which upon insertion of coins or currency, or by other means, dispenses unit servings of food or beverage, without the necessity of replenishing the device between each vending operation.

(2) (a) Except as provided in par. (c), no school board, operator of a charter school under s. 118.40 (2r), or governing body of a private school may sell candy ~~or~~ allow the sale of candy from a vending machine or by any vendor ~~at~~ school or on school grounds.

(b) Except as provided in par. (c), no school board, operator of a charter school under s. 118.40 (2r), or governing body of a private school may sell any beverage other than the following ~~or~~ allow the sale of any beverage other than the following from a vending machine or by any vendor ~~at~~ school or on school grounds:

1. Bottled drinking water.
2. Milk, including chocolate milk.
3. One hundred percent fruit juice.
4. One hundred percent vegetable juice.
5. A blend of the beverages in subds. 3. and 4.

(c) 1. Beginning 30 minutes after the end of the school day and until the school is closed for the night, candy soft drinks, and soda water beverages that contain at least 10 percent natural fruit or vegetable juice may be sold by a school board, operator of a charter school under s. 118.40 (2r), governing body of a private school, or vendor at school or on school grounds.

2. Beginning 30 minutes after the end of the school day and until the school is closed for the night, soda water beverages that contain at least 10 percent natural fruit or vegetable juice may be sold from a vending machine located at school or on school grounds.

INSERT 6-8

^{NO}~~OK~~ With the exception of food sold or distributed through the programs under ss. 115.34, 115.341, 115.343, and 115.345

INSERT 8-7

SECTION 1. Nonstatutory provisions.

(1) No school board, operator of a charter school under section 118.40 (2r) of the statutes, or operator of a private school, as defined under section 115.001 (3r) of the statutes, may enter into, modify, or renew a contract with a vending machine operator or a vendor unless the terms of the contract in effect on July 1, 2012, comply with the requirements of section 118.076 (2) of the statutes, as created by this act.

INSERT 9-NOTE

(2) The treatment of SECTION # of this act takes effect on July 1, 2011.

use auto-ref "X" from line 9, above

(*) use auto-ref "Y" from line 10, above

Kuczenski, Tracy

From: Letzing, Rachel
Sent: Friday, July 17, 2009 3:13 PM
To: Kuczenski, Tracy
Subject: LRB-2520/P2

Hi Tracey, Thanks again for your work on this draft (Gordon's too!). The Note on the last page and the third full paragraph of the Prefatory Note on p. 2 should be deleted and replaced with the following:

Note: Requires all public schools, charter schools, and private schools beginning in the 2012–13 school year to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012 comply with the restrictions in the bill.

In the third full paragraph of the Pref Note, this paragraph should begin with the phrase "This bill requires" instead of "Requires".

Please call if you have any questions. Thanks!

Rachel Letzing
Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph: 608.266.3370
Fax: 608.266.3830



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2520/P2
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RMNR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

by 7/29/09

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Regen

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INSERT 2

The national school lunch and school breakfast programs provide federal funding to schools to serve free and reduced-priced meals and snacks. In exchange for receiving federal funds, schools must serve meals and snacks that adhere to federal nutritional requirements set by the U.S. Department of Agriculture (USDA). USDA requires that school lunches must meet the applicable recommendations of the 1995 Dietary Guidelines for Americans, which recommend that no more than 30% of an individual's calories come from fat and less than 10% from saturated fat. Federal guidelines do not apply to or limit the sale of a la carte or vending machine foods sold in addition to federally funded meals and snacks.

This bill specifies that, beginning in the 2012-13 school year, or when a school contract with a vending machine company expires, whichever is later, all public, charter, and private schools must use the following requirements for foods sold outside of federally reimbursed USDA meal programs (school lunch, school breakfast, school milk, and nutritional improvement for the elderly): no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat, and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day on school grounds. Before the start of the school day until the end of the school day, only milk, water, and 100% fruit juice may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold on school grounds. Candy may not be sold in vending machines at any time of the day on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements.

The Department of Children and Families (DCF) licenses day care centers. Current law requires anyone caring for four or more children under age seven who are unrelated to the provider to be licensed. The two types of licensed day care centers are: 1) family day care centers (up to eight children in care at any given time); and 2) group day care centers (nine or more children at any given time). Current law, as created by the 2009-11 biennial budget act, 2009 Wisconsin Act 28, requires DCF to provide a child care quality rating system that rates the quality of the child care provided by a licensed day care center that receives reimbursement under the Wisconsin Works Program or that volunteers for rating under the system and to make the rating information provided under that system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a day care center that is rated under the system. Current licensing requirements specify that meals and snacks provided at a licensed day care center must comply with the U.S. Department of Agriculture Child and Adult Care Food Program minimum meal requirements. Also under current licensing requirements, licensed day care centers must provide children with experiences that promote large and small muscle development and children must go outside daily unless the weather prohibits doing so. Current licensing requirements

do not specifically direct licensed day care centers to provide nutrition education to children.

The bill requires the child care quality rating system to rate the quality of the child care provided by *all* licensed day care centers. The bill also requires the quality rating system to include indicators regarding the quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served at the day care center, and any other nutritional policies implemented by the day care center. In addition, the bill requires DCF to consult with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided at a licensed day care center. Finally, the bill requires DCF to seek funding to provide financial assistance to licensed day care centers that wish to improve their rating under the quality rating system.

1 **SECTION 1.** 48.659 of the statutes, as created by 2009 Wisconsin Act 28, is
2 renumbered 48.659 (1) (intro.) and amended to read:

3 48.659 (1) (intro.) The department shall provide a child care quality rating
4 system that rates the quality of the child care provided by a ~~child care provider~~ day
5 care center licensed under s. 48.65 ~~that receives reimbursement under s. 49.155 for~~
6 ~~the child care provided or that volunteers for rating under this section.~~ The
7 department shall make the rating information provided under ~~that~~ the quality
8 rating system available to the parents, guardians, and legal custodians of children
9 who are recipients, or prospective recipients, of care and supervision from a ~~child~~
10 ~~care provider~~ day care center that is rated under ~~this section~~ the quality rating
11 system, including making that information available on the department's Internet
12 site. The quality rating system shall include indicators regarding the relative
13 quality of all of the following:

14 **SECTION 2.** 48.659 (1) (a) to (d) of the statutes are created to read:

15 48.659 (1) (a) The nutrition education provided to children by the day care
16 center, including the developmental appropriateness of that education.

17 (b) The physical activity that is included in the day care center's program,
18 including the developmental appropriateness of that activity.

(c) The nutritional value of food and beverages served to children by the day care center.

(d) Any other nutritional policies implemented by the day care center.

SECTION 3. 48.659 (2) of the statutes is created to read:

48.659 (2) The department shall do all of the following:

(a) Consult with the department of health services in establishing the indicators used to evaluate the quality of care provided by day care centers.

(b) Seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

NOTE: Requires the a child care quality rating system provided by DCF to rate the quality of the child care provided by *all* licensed day care centers. Requires the quality rating system to include indicators regarding the relative quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served by the day care center, and any other nutritional policies implemented by the day care center. Requires DCF to work with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided by a day care center. Finally, requires DCF to seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

SECTION 4. 118.075 of the statutes is created to read:

118.075 Assessment of pupil physical fitness. (1) Beginning in the 2010-11 school year, every school board, the operator of every charter school under s. 118.40 (2r), and the governing body of every private school shall do all of the following:

(a) Except as provided in sub. (2), annually assess the physical fitness of each pupil enrolled in grades 3 to 12. The assessment shall include an evaluation of the aerobic capacity of each pupil based upon criterion-referenced standards specific to age and sex and the physical fitness level required for good health.

1 (b) Provide to each pupil and to the parent or guardian of each pupil a copy of
2 the results of the pupil's physical fitness assessment under par. (a).

3 (c) Annually compile the results of the physical fitness assessment conducted
4 under par. (a) and provide a summary of the results to the department. The summary
5 may not contain the names of individual pupils or the teachers or instructional staff
6 of individual pupils. In this paragraph, "instructional staff" has the meaning given
7 in the rules promulgated by the department under s. 121.02 (1) (a) 2.

8 (2) (a) The requirement under sub. (1) (a) does not apply to a pupil for whom
9 the assessment is inappropriate as determined by the state superintendent by rule.

10 (b) The state superintendent shall promulgate rules to implement and
11 administer this section, including all of the following:

12 1. Criteria to determine when the assessment required under sub. (1) (a) is
13 inappropriate for or should not be administered to a pupil.

14 2. The assessment instrument to be used in the assessment required under sub.
15 (1) (a).

NOTE: Directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils enrolled in grades 3 to 12 is assessed annually beginning in the 2010-11 school year. Those schools are not required to assess pupils for whom the assessment is inappropriate, as specified by DPI administrative rule. The assessment must include an evaluation of pupils' aerobic capacity based upon criterion-referenced standards that are specific to a pupil's age and gender and based on the physical fitness level required for good health. The results must be kept confidential, but must be provided to DPI and to a child's parent or guardian.

16 **SECTION 5.** 118.076 of the statutes is created to read:

17 **118.076 School nutrition.** (1) In this section:

18 (a) "Bottled drinking water" has the meaning given in s. 97.34 (1) (a).

19 (b) "Candy" means any food item that has brown sugar, corn sweetener, corn
20 syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup,

1 honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, sucrose,
2 sugar, or syrup, listed first or second in the list of ingredients.

3 (c) "Soda water beverage" has the meaning given in s. 97.34 (1) (b).

4 (d) "Soft drink" means a soda water beverage that contains brown sugar, corn
5 sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose,
6 high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup,
7 molasses, raw sugar, sucrose, sugar, syrup, artificial sweetener, or stevia, except that
8 "soft drink" does not include a soda water beverage that contains at least 10 percent
9 natural fruit or vegetable juice.

10 (e) "Vending machine" means any self-service device that, upon insertion of
11 coins or currency, or by other means, dispenses unit servings of food or beverage,
12 without the necessity of replenishing the device between each vending operation.

13 (2) (a) Except as provided in par. (c), no school board, operator of a charter
14 school under s. 118.40 (2r), or governing body of a private school may sell candy, or
15 allow the sale of candy from a vending machine or by any vendor, at school or on
16 school grounds.

17 (b) Except as provided in par. (c), no school board, operator of a charter school
18 under s. 118.40 (2r), or governing body of a private school may sell any beverage other
19 than the following, or allow the sale of any beverage other than the following from
20 a vending machine or by any vendor, at school or on school grounds:

- 21 1. Bottled drinking water.
- 22 2. Milk, including chocolate milk.
- 23 3. One hundred percent fruit juice.
- 24 4. One hundred percent vegetable juice.
- 25 5. A blend of the beverages in subds. 3. and 4.

1 (c) 1. Beginning 30 minutes after the end of the school day and until the school
2 is closed for the night, candy and soda water beverages may be sold by a school board,
3 operator of a charter school under s. 118.40 (2r), governing body of a private school,
4 or vendor at school or on school grounds.

5 2. Beginning 30 minutes after the end of the school day and until the school is
6 closed for the night, soda water beverages that contain at least 10 percent natural
7 fruit or vegetable juice may be sold from a vending machine located at school or on
8 school grounds.

9 (3) Every school board, the operator of every charter school under s. 118.40 (2r),
10 and the governing body of every private school shall do all of the following:

11 (a) With the exception of food sold or distributed through the programs under
12 ss. 115.34, 115.341, 115.343, and 115.345, ensure that all food sold at school or on
13 school grounds on a school day satisfies the following minimum standards:

14 1. Except for nuts and seeds, no more than 30 percent of the total calories of
15 the food come from fat.

16 2. No more than 10 percent of the total calories of the food come from saturated
17 fats.

18 (b) Encourage the consumption by pupils of whole grains, fresh fruits, and fresh
19 vegetables.

20 (c) Encourage parent teacher organizations, school clubs, school teams, and
21 other school groups conducting fund raising in which the sale of food is involved to
22 follow the standards, policies, and requirements established in pars. (a) and (b) and
23 sub. (2).

24 **SECTION 6.** 119.04 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
25 amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.365 (3), 115.38 (2), 115.445, 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (25), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and 120.25 are applicable to a 1st class city school district and board.

SECTION 7. Nonstatutory provisions.

(1) No school board, operator of a charter school under section 118.40 (2r) of the statutes, or operator of a private school, as defined under section 115.001 (3r) of the statutes, may enter into, modify, or renew a contract with a vending machine operator or a vendor unless the terms of the contract in effect on July 1, 2012, comply with the requirements of section 118.076 (2) of the statutes, as created by this act.

SECTION 8. Initial applicability.

(1) The treatment of section 118.076 (2) and (3) (a) of the statutes first applies to a contract between a vendor or a vending machine operator and a school board, operator of a charter school under section 118.40 (2r) of the statutes, or governing body of a private school, as defined in section 115.001 (3r) of the statutes, entered into, modified, or renewed on July 1, 2012.

SECTION 9. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 118.076 of the statutes takes effect on July 1, 2012.

(2) SECTION 7 (1) of this act takes effect on July 1, 2011.

NOTE: Requires all public schools, charter schools, and private schools beginning in the 2012-13 school year or when a school contract with a vending machine company expires, whichever is later, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day on school grounds. Before the start of the school day until the end of the school day, only milk, water, and 100% fruit juice may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold on school grounds. Candy may not be sold in vending machines at any time of the day on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements.

(END)

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IN/ERT 9 w/10/09

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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The bill requires all public schools, charter schools, and private schools, beginning in the 2012-13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

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Note: Requires all public schools, charter schools, and private schools, beginning in the 2012-13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

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Malaise, Gordon

From: Letzing, Rachel
Sent: Tuesday, September 08, 2009 3:08 PM
To: Malaise, Gordon
Subject: Pref note language

Hi Gordon, I'm wondering if you could please make an addition to the Joint Legislative Council Prefatory Note in LRB-2520/1. After the first sentence, "This bill was prepared for the Joint Legislative Council's Special Committee on Performance-Based Disease Management for Large Populations.", please add the following sentence:

Subsequent to the Committee's approval of preliminary drafts upon which this bill is based, the 2009-11 biennial budget bill (2009 Wisconsin Act 28) was enacted. This bill reconciles the provisions of the committee's bill drafts with current law affected by the biennial budget.

Mary Matthias and I want to add this to clarify the legislative history regarding the study committee bills and the budget. Thanks for making this change and for rewriting my Note in the quality rating system section. Please let me know if you have questions.

Rachel Letzing
Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph: 608.266.3370
Fax: 608.266.3830

09/08/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

IN 919

This week

LRB-2520/1

TKK&GMM:jld/bjk/cjs:ph

2009 BILL

NO
Subsequent to the Committee's approval of the preliminary drafts upon which this bill is based, the 2009-11 biennial budget act, 2009 Wisconsin Act 28, was enacted. This bill, in addition to complying those drafts, reconciles the provisions of those drafts with current law, as affected by the biennial budget act.

Regen

- ✓
- 1 AN ACT to renumber and amend 48.659; to amend 119.04 (1); and to create
2 48.659 (1) (a) to (d), 48.659 (2), 118.075 and 118.076 of the statutes; relating
3 to: physical fitness assessments, school nutrition, a quality rating system for
4 day care centers, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Performance-Based Disease Management for Large Populations.

The Department of Public Instruction (DPI) and the University of Wisconsin (UW) received a three-year grant, which ends in 2010, to administer the FitnessGram physical fitness test in middle schools that volunteer to participate. The FitnessGram is a software program which is comprised of four tests: body mass index measurement, a quasi-situps abdominal strength test, a flexibility test, and the Progressive Aerobic Cardiovascular Endurance Run (PACER). For all elements of the FitnessGram, age and gender norms have been developed and individual scores are measured against these norms. The PACER is a 20-meter shuttle run (back and forth) which is conducted in a

BILL

class-based setting in which 20-50 children can run at a time. The PACER is designed to measure aerobic capacity. The UW has found that the PACER test is a good measure of fitness and a good indicator of diabetes risk.

This bill directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils in grades 3 through 12 is assessed annually and specifies that the assessment must include an evaluation of pupils' aerobic capacity. These schools are not required to assess pupils who have a disability or other condition as specified by DPI administrative rule. The results must be kept confidential but schools are required to send results to DPI and provide an individual child's results to their parent or guardian.

The national school lunch and school breakfast programs provide federal funding to schools to serve free and reduced-priced meals and snacks. In exchange for receiving federal funds, schools must serve meals and snacks that adhere to federal nutritional requirements set by the U.S. Department of Agriculture (USDA). USDA requires that school lunches must meet the applicable recommendations of the 1995 Dietary Guidelines for Americans, which recommend that no more than 30% of an individual's calories come from fat and less than 10% from saturated fat. Federal guidelines do not apply to or limit the sale of a la carte or vending machine foods sold in addition to federally funded meals and snacks.

The bill requires all public schools, charter schools, and private schools, beginning in the 2012-13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

The Department of Children and Families (DCF) licenses day care centers. Current law requires anyone caring for four or more children under age seven who are unrelated to the provider to be licensed. The two types of licensed day care centers are: 1) family day care centers (up to eight children in care at any given time); and 2) group day care centers (nine or more children at any given time). Current law, as created by the 2009-11 biennial budget act, 2009 Wisconsin Act 28, requires DCF to provide a child care quality rating system that rates the quality of the child care provided by a licensed day care center that receives reimbursement under the Wisconsin Works Program or that volunteers for rating under the system and to make the rating information provided under that system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a day care center that is rated under the system. Current licensing requirements specify that meals and snacks provided at a licensed day care center must comply with the U.S. Department of Agriculture Child and Adult Care Food Program minimum meal requirements. Also under current licensing requirements, licensed day care centers must provide children with experiences that promote large and small muscle development and children must go outside daily unless the weather prohibits doing so. Current licensing requirements

BILL

do not specifically direct licensed day care centers to provide nutrition education to children.

The bill requires the child care quality rating system to rate the quality of the child care provided by *all* licensed day care centers. The bill also requires the quality rating system to include indicators regarding the quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served at the day care center, and any other nutritional policies implemented by the day care center. In addition, the bill requires DCF to consult with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided at a licensed day care center. Finally, the bill requires DCF to seek funding to provide financial assistance to licensed day care centers that wish to improve their rating under the quality rating system.

1 **SECTION 1.** 48.659 of the statutes, as created by 2009 Wisconsin Act 28, ^X is
2 renumbered 48.659 (1) (intro.) and amended to read:

3 48.659 (1) (intro.) The department shall provide a child care quality rating
4 system that rates the quality of the child care provided by a ~~child care provider day~~
5 ~~care center~~ licensed under s. 48.65 ~~that receives reimbursement under s. 49.155 for~~
6 ~~the child care provided or that volunteers for rating under this section.~~ The
7 department shall make the rating information provided under ~~that~~ the quality
8 rating system available to the parents, guardians, and legal custodians of children
9 who are recipients, or prospective recipients, of care and supervision from a ~~child~~
10 ~~care provider day care center~~ that is rated under ~~this section~~ the quality rating
11 system, including making that information available on the department's Internet
12 site. The quality rating system shall include indicators regarding the relative
13 quality of all of the following:

14 **SECTION 2.** 48.659 (1) (a) to (d) of the statutes are created to read:

15 48.659 (1) (a) The nutrition education provided to children by the day care
16 center, including the developmental appropriateness of that education.

17 (b) The physical activity that is included in the day care center's program,
18 including the developmental appropriateness of that activity.

BILL

(c) The nutritional value of food and beverages served to children by the day care center.

(d) Any other nutritional policies implemented by the day care center.

SECTION 3. 48.659 (2) of the statutes is created to read:

48.659 (2) The department shall do all of the following:

(a) Consult with the department of health services in establishing the indicators used to evaluate the quality of care provided by day care centers.

(b) Seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

NOTE: Requires the a child care quality rating system provided by DCF to rate the quality of the child care provided by *all* licensed day care centers. Requires the quality rating system to include indicators regarding the relative quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served by the day care center, and any other nutritional policies implemented by the day care center. Requires DCF to work with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided by a day care center. Finally, requires DCF to seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

SECTION 4. 118.075 of the statutes is created to read:

118.075 Assessment of pupil physical fitness. (1) Beginning in the 2010-11 school year, every school board, the operator of every charter school under s. 118.40 (2r), and the governing body of every private school shall do all of the following:

(a) Except as provided in sub. (2), annually assess the physical fitness of each pupil enrolled in grades 3 to 12. The assessment shall include an evaluation of the aerobic capacity of each pupil based upon criterion-referenced standards specific to age and sex and the physical fitness level required for good health.

BILL

(b) Provide to each pupil and to the parent or guardian of each pupil a copy of the results of the pupil's physical fitness assessment under par. (a).

(c) Annually compile the results of the physical fitness assessment conducted under par. (a) and provide a summary of the results to the department. The summary may not contain the names of individual pupils or the teachers or instructional staff of individual pupils. In this paragraph, "instructional staff" has the meaning given in the rules promulgated by the department under s. 121.02 (1) (a) 2.

(2) (a) The requirement under sub. (1) (a) does not apply to a pupil for whom the assessment is inappropriate as determined by the state superintendent by rule.

(b) The state superintendent shall promulgate rules to implement and administer this section, including all of the following:

1. Criteria to determine when the assessment required under sub. (1) (a) is inappropriate for or should not be administered to a pupil.

2. The assessment instrument to be used in the assessment required under sub. (1) (a).

NOTE: Directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils enrolled in grades 3 to 12 is assessed annually beginning in the 2010-11 school year. Those schools are not required to assess pupils for whom the assessment is inappropriate, as specified by DPI administrative rule. The assessment must include an evaluation of pupils' aerobic capacity based upon criterion-referenced standards that are specific to a pupil's age and gender and based on the physical fitness level required for good health. The results must be kept confidential, but must be provided to DPI and to a child's parent or guardian.

SECTION 5. 118.076 of the statutes is created to read:

118.076 School nutrition. (1) In this section:

(a) "Bottled drinking water" has the meaning given in s. 97.34 (1) (a).

(b) "Candy" means any food item that has brown sugar, corn sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup,

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1 honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, sucrose,
2 sugar, or syrup, listed first or second in the list of ingredients.

3 (c) "Soda water beverage" has the meaning given in s. 97.34 (1) (b).

4 (d) "Soft drink" means a soda water beverage that contains brown sugar, corn
5 sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose,
6 high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup,
7 molasses, raw sugar, sucrose, sugar, syrup, artificial sweetener, or stevia, except that
8 "soft drink" does not include a soda water beverage that contains at least 10 percent
9 natural fruit or vegetable juice.

10 (e) "Vending machine" means any self-service device that, upon insertion of
11 coins or currency, or by other means, dispenses unit servings of food or beverage,
12 without the necessity of replenishing the device between each vending operation.

13 (2) (a) Except as provided in par. (c), no school board, operator of a charter
14 school under s. 118.40 (2r), or governing body of a private school may sell candy, or
15 allow the sale of candy from a vending machine or by any vendor, at school or on
16 school grounds.

17 (b) Except as provided in par. (c), no school board, operator of a charter school
18 under s. 118.40 (2r), or governing body of a private school may sell any beverage other
19 than the following, or allow the sale of any beverage other than the following from
20 a vending machine or by any vendor, at school or on school grounds:

21 1. Bottled drinking water.

22 2. Milk, including chocolate milk.

23 3. One hundred percent fruit juice.

24 4. One hundred percent vegetable juice.

25 5. A blend of the beverages in subds. 3. and 4.

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1 (c) 1. Beginning 30 minutes after the end of the school day and until the school
2 is closed for the night, candy and soda water beverages may be sold by a school board,
3 operator of a charter school under s. 118.40 (2r), governing body of a private school,
4 or vendor at school or on school grounds.

5 2. Beginning 30 minutes after the end of the school day and until the school is
6 closed for the night, soda water beverages that contain at least 10 percent natural
7 fruit or vegetable juice may be sold from a vending machine located at school or on
8 school grounds.

9 (3) Every school board, the operator of every charter school under s. 118.40 (2r),
10 and the governing body of every private school shall do all of the following:

11 (a) With the exception of food sold or distributed through the programs under
12 ss. 115.34, 115.341, 115.343, and 115.345, ensure that all food sold at school or on
13 school grounds on a school day satisfies the following minimum standards:

14 1. Except for nuts and seeds, no more than 30 percent of the total calories of
15 the food come from fat.

16 2. No more than 10 percent of the total calories of the food come from saturated
17 fats.

18 (b) Encourage the consumption by pupils of whole grains, fresh fruits, and fresh
19 vegetables.

20 (c) Encourage parent teacher organizations, school clubs, school teams, and
21 other school groups conducting fund raising in which the sale of food is involved to
22 follow the standards, policies, and requirements established in pars. (a) and (b) and
23 sub. (2).

24 **SECTION 6.** 119.04 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
25 amended to read:

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119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.365 (3), 115.38 (2), 115.445, 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (25), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and 120.25 are applicable to a 1st class city school district and board.

SECTION 7. Nonstatutory provisions.

(1) No school board, operator of a charter school under section 118.40 (2r) of the statutes, or operator of a private school, as defined under section 115.001 (3r) of the statutes, may enter into, modify, or renew a contract with a vending machine operator or a vendor unless the terms of the contract in effect on July 1, 2012, comply with the requirements of section 118.076 (2) of the statutes, as created by this act.

SECTION 8. Initial applicability.

(1) The treatment of section 118.076 (2) and (3) (a) of the statutes first applies to a contract between a vendor or a vending machine operator and a school board, operator of a charter school under section 118.40 (2r) of the statutes, or governing body of a private school, as defined in section 115.001 (3r) of the statutes, entered into, modified, or renewed on July 1, 2012.

SECTION 9. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 118.076 of the statutes takes effect on July 1, 2012.

(2) SECTION 7 (1) of this act takes effect on July 1, 2011.

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NOTE: Requires all public schools, charter schools, and private schools, beginning in the 2012-13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

Parisi, Lori

From: Letzing, Rachel
Sent: Thursday, September 10, 2009 11:26 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-2520/2 Topic: assessment of pupil physical fitness by public, charter, and private schools, requirements for vending machines in public, charter, and private schools, and establishing a child care rating system

Please Jacket LRB 09-2520/2 for the SENATE.